

E-299, 132/SA-89-136RESOLVING IMMEDIATE CEASE AND DESIST ISSUES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve Certain Recently Annexed and Platted Undeveloped Lands Within the City of Rochester Known as Viking Hills Third Subdivision and North Park Third Subdivision

ISSUE DATE: September 14, 1989

DOCKET NO. E-299, 132/SA-89-136

ORDER RESOLVING IMMEDIATE CEASE  
AND DESIST ISSUES

PROCEDURAL HISTORY

In December, 1988, the City of Rochester (City) filed an application with the Minnesota Public Utilities Commission (the Commission) to adjust its service area to include all of the areas it has annexed since 1974 in its service area and to determine compensation for these areas. In the Matter of the Application of the City of Rochester to Adjust Its Service Area Boundary with People's Cooperative Power Association, Docket No. E-132, 299/SA-88-996 (the compensation docket).

In January, 1989 the Department of Public Service (DPS) notified the Commission that it would consolidate its review of the compensation docket with an investigation (Docket No. E-132, 299/DI-88-549) it had begun into allegations made by People's Cooperative Power Association, Inc. (People's) that the City had violated People's exclusive service territory by extending electric service to 55 developments within People's assigned service area. The Commission issued its ORDER CONSOLIDATING DOCKETS on June 8, 1989. Docket No. E-132, 299/SA-88-996 now addresses both of these matters.

On March 7, 1989, the City submitted an application to the Commission requesting authority to provide service to the Viking Hills Third Subdivision and the North Park Third Subdivision while compensation is being determined. The City had recently annexed these areas which are in the exclusive service territory of People's.

On May 23, 1989, the Commission issued its ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, REQUIRING THE CITY OF ROCHESTER TO CEASE AND DESIST FROM PROVIDING SERVICE, AND TO SHOW CAUSE in this matter. Among other things, that Order required the City to identify all points within People's assigned service area where the City is serving and such service has not been authorized by the Commission and show cause why

it should not be required to cease and desist from providing service at each of those points and remove all unauthorized facilities presently in place.

On June 5, 1989, the City filed its response to the May 23 Order.

On June 30, the Commission issued its ORDER ADDRESSING SHOW CAUSE FILING. In that Order the Commission directed the Department of Public Service (DPS) to address cease and desist issues in its report in Docket No. E-132, 299/SA-88-996. Specifically the Commission asked the DPS to address whether the City should be ordered to cease and desist from providing service within People's authorized service area where the City has not been authorized to do so by the Commission and whether the City should be ordered to remove facilities in those circumstances.

On July 14, 1989, the DPS filed its report in Docket No. E-132, 299/SA-88-996. The DPS recommended against the Commission issuing an Order requiring the City to immediately cease and desist from providing service in areas where it has violated People's service area and to remove all unauthorized facilities.

The Commission met on August 22, 1989 to consider this matter.

### FINDINGS AND CONCLUSIONS

The Commission agrees with and will adopt the DPS recommendation. In its report, the DPS stated that nearly 1,700 customers are involved. The Commission finds that requiring these customers to change their electric service provider at this stage in the compensation case is unnecessarily confusing and disruptive for these customers. Further, because Rochester has indicated a strong intent to acquire the areas involved in Docket No. E-132, 299/SA-88-996, the Commission concludes that it would be more efficient to proceed with the compensation case while maintaining the status quo in these areas. If Rochester eventually decides not to acquire some or all of the areas involved in the compensation case, transfers of facilities to People's can take place at that time.

In its NOTICE AND ORDER FOR HEARING in the compensation case which was issued on September 14, 1989, the Commission directed that issues of compensation for the areas in this docket and possible statutory violations which may be referred to the Office of the Attorney General be addressed in that matter.

### ORDER

1. The Commission will not require Rochester to immediately cease and desist from providing service in areas where it has violated People's service area and remove all unauthorized facilities. Issues of compensation and possible statutory violations which may be referred to

the Office of the Attorney General for appropriate legal action under Minn. Stat. § 216B.54 (1988) will be addressed in Docket No. E-132, 299/SA-88-996.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)